

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF NEW HANOVER

This Agreement is entered into this ____ day of _____, 20____, between the City of Wilmington, North Carolina, a North Carolina municipal corporation, hereinafter referred to as "the City" and _____, the operator of a tow truck or wrecker service, hereinafter referred to as "the Operator".

W I T N E S S E T H:

Whereas, the City, as it performs its various governmental functions, frequently has the need to call upon the services of a person engaged in the towing and storage of vehicles ("tow truck operators"); and

Whereas, the City has determined that there is a need to establish a working relationship with several tow truck operators to ensure the provision of prompt, effective and safe towing service at the lowest cost; and

Whereas, Section 5-119 of the Wilmington City Code authorizes the City to enter into contracts with one or more persons engaged in the towing and storage of vehicles to remove vehicles in violation of city ordinance from public streets and alleys and other public places under the control of the City;

Whereas, the Operator is desirous and capable of providing the needed towing and storage service.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, the City and the Operator hereby agree as follows:

1. Operator to Provide Towing Service.

a. Operator shall provide wrecker service at the request of the City and all 911 telecommunicators in accordance with the terms of this Agreement. Such requests for wrecker service may be made by City officials and employees and New Hanover County 911 Center telecommunicators whenever, by state law or

local ordinance, the City is authorized to have vehicles removed from accident locations, no parking zones, fire lanes, travel lanes, and other locations, including the towing of junked motor vehicles or health and safety hazard vehicles as defined in Section 5-109 of the City Code.

b. This Agreement shall not apply to any situation where the Operator is engaged by the owner of the vehicle towed or by any person other than an authorized City official or employee or New Hanover County 911 Center telecommunicator.

2. Response to Requests for Towing Service.

a. The Operator shall be either open or available, by one business telephone number 24-hours per day each day of the year.

b. The phone shall be answered promptly using the towing service name.

c. The Operator shall have the necessary tow trucks and equipment in good repair and ready for service.

d. Unless prohibited by traffic conditions at the time of a call, the Operator shall respond to the site of the requested tow within thirty (30) minutes.

e. If the Operator refuses the tow request, for the first and second refusal, he shall be moved to the end of the rotation list. For the third refusal, the operator shall be removed from the rotation list and this agreement shall be terminated.

3. Insurance Requirements. The Operator shall maintain insurance coverage as follows:

a. Garage Liability Insurance applicable to claims arising from tow truck operations, providing liability limits at least in the amount determined from time to time by the City Manager after consulting with the City's insurance advisor.

b. Garage Keepers Legal Liability Insurance applicable to loss or damage to vehicles within the

care, custody or control of towing service, resulting from collision, fire, vandalism, explosion, theft, wind-storm, hail or flood with coverage limits at least in the amount determined from time to time by the City Manager after consulting with the City's insurance advisor.

c. Automobile Liability Insurance on vehicles operated by the tow truck operator and its employees for liability for bodily injury or property damage of not less than the minimum amount set forth in the North Carolina General Statutes.

d. Notice Endorsement. An endorsement by the carrier of each policy required by this section assuring that it will notify the City of Wilmington as well as the insured in writing thirty (30) days before any change in or cancellation of any such policy becomes effective. The Operator shall furnish certificates of such insurance and endorsements required by this section to the City upon the execution of this Agreement.

4. Storage.

a. Operator shall provide at, or in the immediate vicinity of the garage, sufficient lighted, fenced and enclosed storage space and facilities in compliance with the City Zoning Ordinance. Such space shall properly accommodate, store and protect any damaged or undamaged vehicles that might be towed in by the Operator from further damages by exposure to the elements, theft, or acts of vandalism. Except for places of entrance and exit, the Operator's wrecker lot shall be completely enclosed by barriers, constructed and maintained so as to reasonably prevent unauthorized entrance into such lot or garage and the lot shall be properly lighted. All entrances and exits of such lot shall be properly attended or secured at all times. The lot shall have an office, mailing address and telephone service. Only one tow service shall operate at the site. The location and type of storage shall comply with all applicable laws and ordinances including but not limited to zoning ordinances, public nuisance ordinances and environmental laws.

b. Operator may remove a vehicle towed as abandoned from its storage lot to another storage lot meeting the requirements of Section 4a above which is within ten (10) miles of the City limits after forty-eight (48) hours. No additional fees shall be charged for moving the vehicle.

c. The Operator shall comply with the provisions of Article VIII, Division 2 of Chapter 5 of the Wilmington City Code regarding towing and storage businesses.

d. The Operator hereby agrees that the City Police Department shall have the right to inspect the commercial driver's license of Operator and his employees and to conduct periodic inspections of the storage space, facilities and equipment used by the Operator. The Chief of Police or his designee shall determine the equipment necessary to supply satisfactory tow service. The Operator shall notify the City Police Department within five (5) working days of the relocation of its operation to enable the City to determine the Operator's continuing compliance with this contract and applicable laws and ordinances including but not limited to zoning ordinances, public nuisance ordinances and environmental laws. Operator shall pay to the City Police Department an annual inspection fee in accordance with the City's fee schedule.

5. Conduct at Scene of Accident and Towing.

a. Whenever Operator is called to the scene of an accident by the City or New Hanover County 911 Center telecommunicator to tow a disabled vehicle, Operator shall immediately clean up and remove from the street or highway any broken glass, vehicular parts, contents of a disabled vehicle, or other debris to the reasonable satisfaction of the law enforcement officer in charge before leaving the accident scene.

b. The Operator and its agents and employees shall not engage in abusive or offensive language or conduct when called to tow a vehicle. Two complaints of such language or conduct shall subject the Operator to removal from the eligibility list in accordance with paragraph 9 herein.

6. Indemnification.

Operator agrees to indemnify and hold the City, New Hanover County 911 Center, and their officers and employees harmless from any liability to the owner of the vehicle towed, Operator's employees, and all other persons for any loss, costs, or injuries to persons or property resulting from the acts or omissions of Operator or its agents. Operator shall pay all damages to vehicles entrusted to its custody as the result of its negligence.

7. Release of Vehicles Towed.

a. Operator shall be available at all times to release any vehicle towed.

b. Operator shall require sufficient identification of any person seeking to claim a towed vehicle to ensure that such person is entitled to possession of such vehicle. If the vehicle was towed as an abandoned vehicle, the owner shall also obtain and deliver to the Operator a release of the vehicle from the City Police Department.

c. When a vehicle that has been towed is evidence of a crime or has otherwise been impounded or is subject to forfeiture, the City shall so notify Operator when the vehicle is towed and Operator shall not thereafter release the vehicle without the City's written authorization.

8. Compensation.

a. The City shall not be liable to Operator for any fee or expense incurred as a result of the provision of services called for by this agreement, unless it is found that no probable cause existed for towing a vehicle pursuant to N.C.G.S. Section 20-219.11. The Operator shall be compensated by the person who seeks release of the towed vehicle, but Operator shall not charge fees or seek compensation of any kind for nonconsensual tows as described in Section 5-121 of the City Code in excess of the schedule of fees approved by resolution of the City Council.

Operator shall post in a conspicuous place on the business premises and in the tow truck the permitted tow charges.

b. In accordance with N.C.G.S. Section 44A-2(d), Operator may have a lien on the vehicle towed to recover the charges provided for in this section.

9. Solicitation of Business.

Operator hereby agrees not to respond to the scene of an accident or emergency for the purpose of towing vehicles unless specifically called there by a law enforcement officer, New Hanover County 911 Center telecommunicator or a person involved in the accident or emergency.

10. Termination.

a. Upon ten (10) days written notice, this Agreement may be terminated by either party for any reason at any time.

b. After written notice, this Agreement may be terminated and the Operator removed from the eligible list for any violation of this Agreement or applicable City ordinances and regulations. Any Operator removed from the eligible list may, within five (5) working days of the date of the notice of termination, request a hearing before the Chief of Police to show cause why the contract should not be terminated.

The termination of this Agreement shall not affect the responsibilities of the parties relating to vehicles that have been towed as of the termination date.

11. Assignment.

This Agreement may not be transferred or assigned by the Operator without prior approval of the City.

12. Personnel.

It is mutually agreed that Operator is an independent contractor and not an agent of the City, and as such the Operator shall not be entitled to any City employment benefits, such as, but not limited to, vacation, sick leave,

insurance, workmen's compensation, or pension and retirement benefits.

IN WITNESS WHEREOF, the City and the Operator have caused this instrument to be executed the day and year first above written.

CITY OF WILMINGTON

By: _____
City Manager

APPROVED AS TO FORM:

City Attorney

OPERATOR:

By: _____
President/Vice-President

[Corporate Seal]

ATTEST:

Secretary/Asst. Secretary

By: _____ (SEAL)
Proprietor

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public in and for the state and county aforesaid, certify that STERLING B. CHEATHAM, City Manager of THE CITY OF WILMINGTON, NORTH CAROLINA, personally appeared before me this day and acknowledged the due execution of the foregoing Agreement in her capacity as City Manager.

WITNESS my hand and official seal, this ____ day of-
_____, 20____.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public, certify that Secretary, personally came before me this day and acknowledged that she/he is Secretary of _____, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself/himself as its Secretary.

Witness my hand and official seal, this the ____ day
of _____, 20____.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public in and for
the state and county aforesaid, certify that _____
_____ personally appeared before me this day
and acknowledged the due execution of the foregoing
instrument.

WITNESS my hand and notarial seal, this _____ day of
_____, 20__.

Notary Public

My Commission Expires:

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